

CSXT Exhibit 5

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August 18, 2020

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Re: *CSX Transportation, Inc., et al v. Norfolk Southern Railway Company, et al*
Civil Action No.: 2:18-cv-00530

Dear Counsel:

I write to follow up on this morning's telephone conference regarding the expiration of the current stay period in this case, which ends tomorrow – Wednesday, August 19. During this call, I laid out a proposed schedule on behalf of my client, CSX Transportation, Inc. ("CSXT"), that allows all parties to conclude fact and expert discovery before the end of the year. While the

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COVID-19 pandemic continues to pose challenges and inject uncertainty into court schedules, it would benefit our clients – and the Court – to put in place a schedule that allows us to move this case forward as best as we can, given the existing limitations. To that end, CSXT proposes the following schedule:

- *Written and Document Discovery.* If a receiving party believes a producing party's responses served to date are deficient, it will notify the producing party in writing by Friday, August 28, so that the parties can meet and confer. If the parties cannot resolve the issues, any motions would be filed by Friday, September 11. This agreement would, in no way, limit the parties' obligations to supplement under the Federal Rules.
- *Depositions.* Although circumstances are continually evolving, we believe that the parties should re-commence depositions in September, remotely by video or with agreed-upon procedures to allow for strict social distancing. Under the circumstances, we believe the default should be that depositions will be taken by remotely to limit the health risk for everyone involved, but can discuss specific exceptions on a case-by-case basis. We propose that Norfolk Southern Railway Company ("NS") and the Norfolk & Portsmouth Belt Line Railroad Company ("NPBL") begin taking depositions on Monday, September 28 and finish all fact depositions no later than Monday, October 26. This time period – a total of 21 business days – is in excess of the 11 business days NS and NPBL had remaining in their fact discovery period when the first joint stay was entered in mid-March. If Judge Leonard grants CSXT's pending motion to reopen depositions and compel additional depositions, CSXT would notice and take those additional depositions during the same period, subject to the same logistical limitations.
- *Expert Deadlines.* Defendants' expert reports would be served no later than seven days following Defendants' last fact witness deposition – that is, Monday, November 2. CSXT's expert will have three weeks after Defendants' report is served to serve its rebuttal report, by Monday, November 23. Expert Depositions would be taken during the week of December 7.
- *Mediation.* We propose the parties work with the Court to schedule a settlement conference in January 2021, ideally with position statements submitted during the week of January 11 and the mediation taking place the week of January 18 or 25, 2021.

This proposed schedule does not contemplate setting other pretrial deadlines – such as for motions for summary judgment – which are more appropriately tied to the new trial date that will be set by the Court.

We look forward to discussing this proposal with you tomorrow, Wednesday, August 19, at 3:30 p.m. Prior to that telephone conference, we will circulate a draft joint motion to extend the deadline for filing a joint status report to the Court until Monday, August 24.

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With best wishes, I am

Sincerely yours,



Robert W. McFarland

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